

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Requests for Review of)
Decision of the)
Universal Service Administrator by)
)
Ewing Marion Kauffman School)
Kansas City, MO)
Entity Number: 16062278)
)
Schools and Libraries Universal Service)
Support Mechanism)
_____)

File Number: _____

CC Docket Number: 02-6

REQUEST FOR REVIEW

Petitioner, Ewing Marion Kauffman School, Entity Number 16062278 respectfully requests that, pursuant to the authority contained in Sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and pursuant to the authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review as filed by Petitioner be granted by the Federal Communications Commission, that USAC's denial be overturned, and that minimum processing standards be waived for good cause shown. In support of this Request, Petitioner Ewing Marion Kauffman School states and alleges as follows:

STATEMENT OF FACTS

1. Ewing Marion Kauffman School (hereinafter referred to as "Petitioner") is a college preparatory school located in Kansas City, Missouri. The Petitioner's structure is based upon examples of charter schools throughout the country that assists urban students attend, and graduate, from college.

2. Petitioner applied for funding through the Schools and Libraries Division of the Universal Services Administrative Company (hereinafter referred to as "USAC") which administers the Universal Service Fund.

3. In Funding Year 2013, Petitioner applied for USAC Funding to be used to procure cellular services, internet access and voice over internet protocol service (VoIP) for the benefit of Petitioner.

4. On November 9, 2012, Petitioner filed Form 470 Description of Services Requested and Certification, pursuant to the competitive bidding requirements of USAC.

5. Petitioner's Form 470 includes acknowledgement and certification of several terms of compliance that are standard and customary for this application. Included among those certifications is Certification Number 18, which states as follows:

"I certify that all bids submitted will be carefully considered and the bid selected will be the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals."

Petitioner certified the foregoing term in its submission of its Form 470, a true and correct copy of which is attached to this Request at Exhibit A.

6. On November 19, 2012, Petitioner received an acknowledgement of Receipt of Form 470 from USAC, advising Petitioner of the 28 day window to submit and receive Requests for Proposal. A true and correct copy of that Receipt is attached to this Request as Exhibit B.

7. On March 14, 2013, Petitioner filed Form 471, application number 914773, with funding request numbers 2493257, 2493272 and 2493298. A true and correct copy of Petitioner's Form 471 is attached to this Request as Exhibit C.

8. Form 471 includes an acknowledgement and certification that mirrors that of Form 470 regarding consideration of cost-effective equipment and that price of the same shall be a primary factor. See Ex. C. at ¶ 27.

9. On March 22, 2013, Petitioner received a Receipt Acknowledgement Letter from USAC stating USAC received Petitioner's Form 471 and asking Petitioner to notify USAC if there were any changes, additions, alterations or deletions to be made to Petitioner's funding request information. A true and correct copy of the Receipt is attached to this Request as Exhibit D.

10. Petitioner deemed the Receipt Acknowledgement Letter conformed to all information submitted by Petitioner to USAC in both its Form 470 and Form 471.

11. Funding Request Numbers 2493272 (internet service) and 2493298 (VoIP) were assigned to Petitioner's requests.

12. Following submission of Petitioner's Form 471, eRate Solutions, L.L.C. (eRate), as consultant for Petitioner, exchanged several emails with a representative for USAC's review committee, which was seeking additional information regarding the contents of Form 471 and the basis for selection of providers for cellular, internet access, and VoIP services.

13. During the course of these communications, eRate consistently provided as much information as possible to USAC. There was, however, difficulty providing said information because there was significant turnover in Petitioner's workforce. There was another hurdle to be jumped in the form of the fact that it appeared that the previous staff may or may not have had a written vendor selection matrix in place that would conform with USAC's requirements and the relevant statutory provisions cited herein.

14. Most of what was discovered and produced during the review came in the form of one table and one email. The table provides that there were four bids for the internet service: SureWest, Windstream, Time Warner and TW Telecom. A true and correct copy of the table is attached to this Request as Exhibit E.

15. This table was submitted from Petitioner to eRate after the provider selections were made and during the USAC review process, but that does not mean it was created after the

selections were made. Ex. E was offered to show the basis of Petitioner's selection for its internet and VoIP providers as it would have existed at that time.

16. The table that was created shows the value of each provider with regards to price, prior experience, connectivity, and customer service. Each element would have been a factor at the time of selection had the current staff been in place when the decisions were made.

17. The other documentation of criteria selection includes an email that was provided to USAC during the review process. The email is from a person with decision making authority for Petitioner to another of Petitioner's employees, dated January 18, 2013 – well before the Contract Award Date – and states in relevant part:

“Internet Time Warner is less expensive, but SureWest has proven track record.
VoIP Given the fact that we have incorporated the Bell Commander speaker into the existing system, and their 3yr pricing is lowest, They get my vote.”

A true and correct copy of the January 18, 2013 email from Randy Emler to Steve Chapman is attached to this Request as Exhibit F.

18. Petitioner was notified by letter dated September 4, 2013, that Funding Requests Numbers 2493272 and 2493298 were denied, in large part, upon the same evaluation.

19. Funding Request Number 2493298 was denied on the basis that the vendor selection documentation (Ex. E and Ex. F) provided during the review process was created after the Contract Award Date. Funding Request Number 2493272 was denied upon the same basis and additionally, because there were four bids but only two were considered.

20. By letter dated October 31, 2014 and signed and submitted on November 3, 2014, by separate cover, Petitioner appealed the initial denial of Funding Request Numbers 2493298 and 2493272. A copy of those appeals are attached to this Request as Exhibit G and Exhibit H.

21. By letter dated December 23, 2014, Petitioner received notice that the appeal of the initial denial would be denied for the same reasons as set forth above. A true and correct copy of the Administrator's Decision is attached to this Request as Exhibit I.

22. Petitioner now seeks review of the denial for the reasons set forth below.

ARGUMENTS AND AUTHORITIES

23. The Federal Communications Commission (hereinafter referred to as "the FCC") has the authority on appeal to waive minimum processing standards as established by USAC, which is a derivative administrative agency of the FCC. See: The Federal Communications Act of 1934, As Amended, 47 USC §151, et seq.

24. Based upon a review of the relevant precedent, good cause exists to waive the minimum processing standards established by USAC.

25. With regarding to Funding Request Number 2493298 (the VoIP service), all evidence points to the fact that the bid submitted with the lowest price – sipVine – was the provider that was actually selected. Petitioner disputes any allegation that the cost of the service was not the highest weighted factor in Petitioner's decision to select sipVine as the provider because Petitioner does not possess any documentation that would confirm or dispute that contention. However, even if that were not the case and Petitioner did not weight the vendor selection matrix with cost as the highest factor, Petitioner (a) certified in both Forms 470 and 471 that cost was the primary consideration and (b) ultimately selected sipVine as the provider, which was the lowest cost vendor. See Ex. E, F, and G.

26. In the event of a violation of the vender selection process – which Petitioner disputes – if the lowest cost bid is selected there is precedent for considering the applicant's process was consistent with the policy goals underlying this Commission's competitive bid process and bidding rules. See In the Matter of Euclid City School District, File No. SLD-819274, CC Docket

No. 02-06, November 20, 2012. Based upon the Commission's previous rulings there is no basis for denial of Petitioner's claim as to Funding Request Number 2493298.

27. With specific regard to Funding Request Number 2493272, the Administrator's Decision is likewise in error. First, the denial was based solely upon an email that was produced through the course of the review process, accepting as true a date of the email instead of the contents of the email. As stated herein, Petitioner does not possess written documentation of the vendor selection matrix. The table that was submitted was done so via email after the Contract Award Date, but the information contained therein was the only reliable data upon which Petitioner would have relied at the time vendor selections were made. Simply because the information was provided during the review process and after the Contract Award Date does not mean it was not the information that Petitioner utilized in the selection process.

28. Petitioner acknowledges that in selecting a vendor for Funding Request Number 2493272, Petitioner did not select the lowest price vendor bid. Petitioner further acknowledges that in the email Petitioner admitted that the vendor selected was not the lowest bid, but did have a proven track record. What was not disclosed in that email is that Petitioner was presently engaged in a contract with the selected vendor and had a contractual obligation for an additional twenty-four months at the time of the decision to deny Petitioner's Form 471 request. Had Petitioner selected the lowest bid request they would have had to pay a combined total to two vendors that exceeded what they paid to one. Therefore, based upon the "proven track record" (Ex. F) and the contract conundrum, Petitioner fulfilled its certification that the vendor that was selected was the most cost-effective means of meeting educational needs and technology plan goals.

29. The program under which Petitioner applied for USAC funding states that in order to obtain a Contract Award, the applicant "must select the most cost-effective bid."¹ The same

¹ <http://www.usac.org/sl/applicants/step03/evaluation.aspx>

directive provides that the applicant “should” use factors that are set forth in a sample “bid evaluation matrix”. It is counterintuitive to state that an applicant must follow certain rules and should follow other guidelines, and then deny an applicant for reasons in which it followed required rules, and then attempted to follow suggested guidelines.

30. Petitioner understands that the email upon which the decision was made to deny Petitioner’s request was produced during the Review Process and after the Contract Award Date. That is not to say, though, that creation of contents of the June 19, 2014, upon which Petitioner would have relied, is any different than how Petitioner made the request at the time. In fact, there is no written basis for suggesting that the process set forth in the materials provided were actually created or utilized on June 19, 2014.

31. It is therefore not necessary to select the lowest price bidder, but with regard to Funding Request Number 2493298, Petitioner did just that. There is no basis for denial of that request.

32. Funding Request Number 2493272 is of course subject to the same standards: cost-effective means. It does not require the Petitioner to select the lowest price vendor, it only mandates that in consideration of the bids submitted, that cost of the service be weighted most heavily. In this instance, Petitioner selected a vendor that was not the cheapest, but with all other factors considered became the most “cost-effective” option. Therefore, Petitioner not only certified in their filings of Forms 470 and 471 that they agreed to be bound by the USAC procedures, but they followed those procedures and requirements given the present circumstances.

33. The primary objective of the USAC program is to ensure that schools and libraries benefit from the Schools and Libraries Universal Service Support Mechanism as contemplated by the Statute.²

² *In Re Naperville Community Unit School District 203, Naperville, Illinois*, ¶9, adopted February 27, 2001

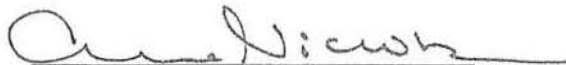
34. The basis for denial at issue is procedural rather than substantive. Precedent demonstrates that such a violation warrants review and reversal.³

35. Granting this request for proper review of the circumstances will not interfere with monies held by the Universal Service Fund. These funds have already been collected and held in reserve. No prejudice results to the Universal Service Fund or to the public interest.⁴

CONCLUSION

Petitioner respectfully requests that, pursuant to the authority contained in Sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §151-154 and 254, and pursuant to the authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), and pursuant to the present precedent. Petitioner therefore respectfully requests that USAC's denial be reversed.

Respectfully Submitted,



Anne Nichols
Director of Operations
Ewing Marion Kauffman School

Dated: 2/19/2015

³ *In Re Requests for Waiver of Decisions of USAC by Academy for Academic Excellence, Apple Valley, California, et al.* ¶5. Adopted March 9, 2007. (Schools and Libraries Universal Support Mechanism, File Nos. SLD-539076, 539722 et al, CC Docket No. 02-6). *Citing In Re: Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al.* ¶14, adopted May 19, 2006.

⁴ *In Re Requests for Waiver of Decisions of USAC by Academy for Academic Excellence, Apple Valley, California, et al.* ¶6. Adopted March 9, 2007. (Schools and Libraries Universal Support Mechanism, File Nos. SLD-539076, 539722 et al, CC Docket No. 02-6).